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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,375	02/07/2001	Mattias Schmidt	8414Q	6856

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EXAMINER

KIDWELL, MICHELE M

ART UNIT PAPER NUMBER

3761

DATE MAILED: 04/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/778,375

Applicant(s)

SCHMIDT ET AL. *cn*

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5-6.                      6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

### ***Drawings***

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

- Reference character "56" (page 7)
- Reference character "54" (page 7)

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign(s) not mentioned in the description:

- Reference character "37" (figures 1 and 2)

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- Reference character "120" (figure 1)
- Reference character "500" (figure 4)
- Reference character "502" (figure 4)
- Reference character "504" (figure 4)
- Reference character "506" (figure 4)
- Reference character "508" (figure 4)
- Reference character "510" (figure 4)
- Reference character "43" (figure 4)
- Reference character "44" (figure 4)
- Reference character "605" (figure 5)

A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign(s) in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because:

- Reference character "52" has been used to designate both end edges and a front end edge.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Specification***

The disclosure is objected to because of the following informalities: the reference to the U.S. Application on page 17, lines 7 – 8 should be completed.

Appropriate correction is required.

***Claim Objections***

Claim 15 is objected to because of the following informalities: the second occurrence of the word "article" in line 2 should be removed. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites the limitation "the wearer" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claims 4 – 5 recite the limitation "the phase change temperature" in line 1 of each claim. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the thermal cell actuator" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 11 recites the limitation "the thermal cell actuator" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 12 recites the limitation "the thermal cell actuator" in lines 1 – 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 13 recites the limitation "the thermal cell actuator" in line 1. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

Claims 1, 6 and 8 – 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Glaug et al. (US 5,797,892).

With respect to claim 1, Glaug et al. (hereinafter "Glaug") discloses an absorbent article comprising a backsheet (3), a liquid pervious topsheet joined to the backsheet (1), an absorbent core disposed intermediate to the topsheet and the backsheet (2), and

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a phase change material disposed at least on a portion of the article as set forth on page 5, lines 29 – 32.

With reference to claim 6, Glaug discloses an absorbent article wherein the phase change material effects relative humidity or temperature within the article or between the article and the wearer as set forth in col. 9, lines 3 – 5.

As to claim 8, Glaug discloses an absorbent article wherein the phase change material has a latent heat energy of at least about 200 kJ/kg as set forth in col. 9, lines 29 – 34.

Regarding claim 9, Glaug discloses an absorbent article wherein the phase change material is used at a basis weight of at least about 100 gsm as set forth in col. 9, lines 34 – 37.

With respect to claims 10 and 11, Glaug discloses an absorbent article wherein a thermal cell actuator is removable from the article or attachable to the article as set forth in the abstract.

Claims 1 – 2 are rejected under 35 U.S.C. 102(e) as being anticipated by Pomplun et al. (WO 00/38748).

With respect to claim 1, Pomplun et al. (hereinafter “Pomplun”) discloses an absorbent article comprising a backsheet (3), a liquid pervious topsheet joined to the backsheet (1), an absorbent core disposed intermediate to the topsheet and the backsheet (2), and a phase change material disposed at least on a portion of the article as set forth on page 5, lines 29 – 32.

As to claim 2, Pomplun discloses an absorbent article wherein the phase change material changes phases in response to a change between the backsheet of the article and the skin of the wearer in relative humidity, moisture or temperature as set forth on page 5, line 29 to page 6, line 6.

Claims 1, 3 – 7 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Hermann (WO 97/44183).

With respect to claim 1, Hermann discloses an absorbent article comprising a backsheet (page 3, lines 11 – 16), a liquid pervious topsheet joined to the backsheet (11), an absorbent core disposed intermediate to the topsheet and the backsheet (12), and a phase change material disposed at least on a portion of the article as set forth in the abstract.

With reference to claim 3, Hermann discloses an absorbent article wherein the phase change material will change from a liquid to a solid or from a solid to a liquid in response to a temperature change in the absorbent article as set forth on page 12, lines 16 – 18. In this section, Hermann incorporates Salyer (US 5,254,380).

Salyer discloses a phase change material will change from a liquid to a solid or from a solid to a liquid in response to a temperature change as set forth in col. 1, lines 20 – 30.

As to claims 4 and 5, Salyer discloses a phase change temperature of the phase change material between about 30°C to about 37°C or between about 32°C and 35°C as set forth in col. 5, lines 30 – 34.



With respect to claim 6, Salyer discloses an absorbent article wherein the phase change material effects relative humidity or temperature within the article or between the article and the wearer as set forth in col.

With reference to claim 7, Salyer discloses the phase change material being selected from the listed group as set forth in col. 4, lines 36 – 65.

With respect to claim 14, Salyer discloses a the phase change material effecting a decrease in malodorous vapors in the article when the phase change material changes phases as set forth in col. 1, lines 24 – 39 and col. 2, lines 5 – 6. It is well known in the art that silica performs as an odor absorber.

Claims 1 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hasse (US 5,591,146).

With respect to claim 1, Hasse discloses an absorbent article comprising a backsheet (26), a liquid pervious topsheet joined to the backsheet (24), an absorbent core disposed intermediate to the topsheet and the backsheet (28), and a phase change material (89) disposed at least on a portion of the article as set forth in figure 2.

As to claim 15, Hasse discloses an absorbent article wherein the phase change material effects an increase in fragrance in the article when the phase change material changes phases as set forth in col. 11, lines 5 – 8.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

  
Michele Kidwell  
April 3, 2003

  
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